

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Application by SBC Communications Inc.)
Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell)
Long Distance for Provision of In-Region)
InterLATA Services in Oklahoma)

CC Docket No. 97-121

REPLY COMMENTS OF BROOKS FIBER PROPERTIES, INC.

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SUMMARY

Brooks Fiber Properties, Inc. ("Brooks") hereby submits its reply comments in opposition to SBC's Application for in-region, interLATA authority. In particular, these reply comments respond generally to the Evaluation of the United States Department of Justice ("DOJ Evaluation") filed herein on May 16, 1997, and to several specific matters addressed therein. Brooks concurs in DOJ's judgment that the absence of broader-based competitive entry in Oklahoma at present is the result of both the time required for facilities-based interconnection and operational development, and SBC's failure to take steps necessary to remove barriers to competitive entry. As discussed in further detail herein, SBC bears significant responsibility for the pace of competitive entry in Oklahoma because, among other things, of its failure to provide collocations in a timely and efficient manner, and due to pricing policies which create economic barriers to unbundled loop-based residential service.

DOJ's Evaluation has provided an extensive legal, policy and factual analysis which reinforces the conclusion that SBC's Application for in-region, interLATA authority for Oklahoma is extremely premature and should be rejected.

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REPLY COMMENTS OF BROOKS FIBER PROPERTIES, INC.

Brooks Fiber Properties, Inc. (“Brooks”) hereby submits these Reply Comments in opposition to SBC’s Application for in-region, interLATA authority.

I. THE UNITED STATES DEPARTMENT OF JUSTICE’S EVALUATION CORRUPTLY IDENTIFIES THE REASONS WHY LOCAL EXCHANGE COMPETITION HAS NOT DEVELOPED MORE EXTENSIVELY IN OKLAHOMA AT THIS POINT

In its Evaluation¹ the United States Department of Justice (“DOJ”) has correctly assessed and succinctly stated the reasons why local exchange competition has not yet developed in Oklahoma to the point which would justify SBC’s entry into the in-region, interLATA market. One reason is simply “the time needed to secure an agreement with SBC, and then to fully implement it and become an operational provider.”² The other

¹ Evaluation of the United States Department of Justice, filed May 16, 1997 (“DOJ Evaluation”).

² *Id.* at 56.

reason is that, "SWBT has failed to provide adequate, nondiscriminatory access to essential checklist items that potential competitors have requested."³ Under the most favorable circumstances and assumptions, entry into the heretofore monopoly domain of the incumbent LECs is not an easy matter, particularly for a carrier like Brooks which is deploying sophisticated transmission and switching equipment and physically interconnecting its network with SBC's to compete on a facilities basis. Given the complexities inherent in interconnecting competing networks and the lack of a ready-to-use interconnection template, most negotiated agreements took the full five plus months to complete.⁴ Only after the signing of an interconnection agreement could full interconnection implementation get underway,⁵ which in turn takes some period of time. In Brooks' case in Oklahoma, it took a period of approximately four months to physically connect with the SBC network at the tandem and implement all necessarily ancillary services and functions (*e.g.*, 911, Operator Services, etc.) to permit initial activation of service.⁶

³ *Id.*

⁴ This is consistent with Brooks' experience with SBC in Oklahoma – where negotiations extended from late March until late August, 1996 – and with SBC in other states and with other Bell Companies.

⁵ Physical collocation was an exception to the rule, in that SBC began processing those Brooks applications which were submitted prior to the signing of the respective state interconnection agreements. Nevertheless, given the substantial processing time associated with the physical collocation applications, completion of the collocations is substantially lagging behind basic interconnection of the companies' networks (*i.e.*, between SBC's tandem and Brooks' host switch) which occurred in January, 1997.

⁶ It is logical, and consistent with Brooks' experience, that activation of a competitive provider's first network with a particular Bell Company will take the longest, as both firms start from a position of having no familiarity with each other.

In addition to the time inherent in the interconnection of the Brooks and SBC networks under best case circumstances, Brooks fully concurs in DOJ's assessment that SBC has, to this point, failed to provide what competitors need in order to enter the market to the degree required to justify SBC's entry into in-region, interLATA long-distance. While it is difficult in these circumstances to obtain explicit, "smoking gun" documentation of intentional delay by a Bell Company, Brooks believes the record herein clearly demonstrates that SBC has, at a minimum, failed to take the pro-active steps necessary to permit local exchange competition to develop in Oklahoma at anywhere near the pace that would warrant an SBC Application under Section 271 of the Act at this point.

II. SBC'S DELAYS IN THE COMPLETION OF BROOKS' COLLOCATIONS AND ITS PRICING ACTIONS IN OKLAHOMA HAVE DELAYED BROOKS' ABILITY TO PROVIDE UNBUNDLED LOOP-BASED SERVICES

To provide unbundled loop-based services, Brooks is building out transport facilities to various incumbent LEC central offices where collocations⁷ will provide the interconnection point to obtain access to unbundled loops. In Oklahoma, Brooks currently is collocating in eight SBC central offices in Oklahoma City and five in Tulsa.⁸ Because the collocations constitute the interconnection point for unbundled loops, Brooks cannot commence use of unbundled loop facilities from SBC until those collocations are

⁷ Wherever possible, Brooks is obtaining physical collocation.

⁸ The Oklahoma City central offices are: Central, Victor, Parkview, Skyline, Windsor, Melrose, Mutual and University; the Tulsa central offices are: Elgin, National, Woodcrest, Riverside and Temple.

operational.⁹ Brooks' equipment vendor is now installing transmission and, in some cases, switching equipment in eight of those collocations. However, equipment installation is not yet complete in any of the collocations. Once installation has been completed, the equipment and its connections to the SBC network must be fully tested to ensure the provision of high quality service.

Brooks is moving as rapidly as possible to complete these collocations and begin the commencement of unbundled loop-based service at the earliest possible time, consistent with all testing and service quality considerations. Any implied suggestion to the contrary is simply ludicrous. Brooks is investing approximately \$2.8 million in collocation facilities alone in Oklahoma,¹⁰ in addition to the substantial investment in fiber optic transmission equipment, digital switching facilities and related infrastructure. As a capital intensive, start-up competitive local exchange carrier, the overwhelming financial imperative for Brooks is to begin offering economically viable service as quickly and broadly as is possible under prevailing circumstances, and that is exactly what Brooks is doing, not only in Oklahoma but nationwide.

The imperative to make efficient use of its network by broadly offering service means that Brooks is definitely interested in providing residential, as well as business, local exchange service. Indeed, in its most mature network in Grand Rapids, Michigan, Brooks is serving approximately 5,000 residential access lines. The primary barrier for a fiber ring

⁹ As Brooks has indicated, it has two pre-existing virtual collocations in Oklahoma under SBC's interstate expanded interconnection tariff. Contrary to SBC's assertions, and as explained further *infra*, unbundled loops cannot be utilized through those virtual collocations due to restrictions imposed by SBC.

¹⁰ Brooks believes SBC's price quotes are excessive, and has paid them under protest and subject to after-the-fact review and a right to challenge.

carrier like Brooks to provide residential local exchange service on a broad scale in any of its cities is its lack of a ubiquitous loop distribution system. Given the lack of a ubiquitous network, Brooks will look for opportunities to offer residential local exchange service through whatever facilities-based alternatives may exist in a particular location at any time.¹¹ For example, Brooks will look for opportunities to provide multiple dwelling unit residential service via by direct connections to its fiber facilities, and will explore use of alternative loop providers (*e.g.*, wireless systems).¹²

However, the primary vehicle available to Brooks in the near term to provide residential service is through lease of incumbent LEC unbundled loops (connected at Brooks collocation facilities at the incumbent's serving wire centers) in combination with Brooks' transport and switching facilities.¹³ In addition to requiring actual availability of unbundled loops from the incumbent LEC (*i.e.*, completion of necessary collocations and implementation of necessary operational support systems), provision of residential local exchange service through unbundled loops presents unique economic considerations due to the relationship of the incumbent LEC's unbundled loop pricing and the incumbent's retail residential local exchange service rate. In Oklahoma, SBC's recurring unbundled loop rate to Brooks is effectively \$19.13 per loop per month (\$17.63, plus \$1.50 cross-

¹¹ Brooks has a fundamental corporate policy of providing service primarily on a facilities basis. This policy is consistent with one of fundamental underlying assumptions of the Act – that while resale has its function, facilities-based competition is the preferred and more meaningful type of competition.

¹² Brooks will offer residential service through such alternative means in Oklahoma and in other states whenever circumstances allow such service to be deployed on an economically viable basis.

¹³ The thirteen SBC central offices in Oklahoma where Brooks is currently pursuing collocation serve approximately 400,000 access lines, of which about 240,000 (*i.e.*, 60%) are residential lines.

connect charge). At the same time, SBC's retail residential local exchange rate in its Oklahoma metropolitan area exchanges is in the \$13 to \$14 range (plus the \$3.60 subscriber line charge). When one considers SBC's sizable non-recurring unbundled loop charges¹⁴ and Brooks' own substantial investment in collocation, transport, switching and related facilities and support systems, it is obvious that SBC's pricing of unbundled loops creates a "price squeeze" which makes the provision of unbundled loop-based residential service in Oklahoma under current circumstances severely uneconomic.

Obviously, it is within SBC's direct control to cure this situation – by significantly reducing its unbundled loop rates. In its interconnection negotiations with SBC, Brooks sought unbundled loop rates at a level which would have permitted viable unbundled loop-based residential services, but those prices were rejected by SBC.¹⁵ Brooks will again seek such unbundled loop pricing from SBC when it reinitiates interconnection negotiations with SBC for Oklahoma later this year.¹⁶ Until such time as SBC remedies this price squeeze, it should not be heard to complain that competing providers are not providing unbundled loop-based residential local exchange service.¹⁷

¹⁴ SBC's interconnection agreement with Brooks specifies an \$82.75 non-recurring charge per loop (\$50.00 per additional line of the same order at the same premises).

¹⁵ Indeed, as noted in Brooks' May 1 Opposition, SBC increased its unbundled loop rate offer after verbal closure of that issue during the interconnection negotiations, once SBC learned that the Commission's proxy ceiling rate for Oklahoma was higher than the verbally agreed-to rate.

¹⁶ The term of the Brooks-SBC interconnection agreement for Oklahoma expires July 1, 1998.

¹⁷ The Commission should also be aware that the Oklahoma Corporation Commission has now established a docket to determine cost-based pricing for SBC's interconnection and unbundled elements. Application of Cox Oklahoma Telcom, Inc., for a Determination of the Costs of, and Permanent Rates for, the Unbundled Network Elements of Southwestern Bell Telephone Company, Case No. PUD 97000213. The Commission should be aware, however, that SBC has informed the OCC that its cost studies will not be complete until mid-July, 1997, and the OCC does not contemplate a hearing in the case until February, 1998.

Clearly, the process of applying for and constructing physical collocations in SBC territory has been a learning experience for both Brooks and SBC. That being said, however, the fact that none of Brooks' Oklahoma collocations (other than the two pre-existing virtual collocations) are operational at this time is, to a significant extent, due to actions and processes within the direct control of SBC. Particularly for the earliest physical collocation applications submitted by Brooks in Oklahoma, Brooks found the process to be highly bureaucratic¹⁸ and inflexible, which led to confusion, revised applications and lost time.¹⁹ Moreover, construction intervals for the collocations are a matter completely within the control of SBC and its subcontractors, and for the earliest Oklahoma collocation applications construction intervals of five months were the norm.²⁰

The matter regarding Brooks' two pre-existing virtual collocations is particularly instructive concerning SBC's attitude towards competition, and is otherwise worthy of discussion based on the discrepancy which currently appears to exist in the record. As DOJ notes in its Evaluation,²¹ SBC has submitted – in its Opposition to ALTS' Motion to Dismiss – the affidavit of William Deere, which asserts that current virtual collocation

¹⁸ In a number of areas, Brooks found the application forms to be ambiguous or confusing regarding the actual information being sought. The resulting "confusion factor" was exacerbated by the fact that direct interaction between Brooks and SBC collocation experts was inhibited by SBC's insistence on channeling all communications regarding collocation through a non-expert single point of contact.

¹⁹ For the Oklahoma City-Victor and Tulsa-National collocations, approximately four months elapsed between the time Brooks submitted its initial applications and receipt of definitive price quotes from SBC for the applications as amended. For the Oklahoma City-Central and Tulsa-Elgin central offices, the corresponding delay was approximately three months.

²⁰ For Oklahoma City-Central and Victor, and Tulsa-Elgin and National, actual construction time by SBC was approximately five months from receipt of Brooks' authorization to construct.

²¹ DOJ Evaluation at 32.

arrangements provide access to all functions requested in the interconnection agreement, including the ability to use unbundled loops. This may be theoretically true but is, in fact, absolutely false with respect to Brooks' two pre-existing virtual collocations in Oklahoma.

What is particularly ironic is that the SBC assertion is wrong as applied to Brooks' Oklahoma virtual collocations because of restrictions imposed unilaterally by SBC. During the course of interconnection negotiations between Brooks and SBC during the summer of 1996, Brooks asked SBC representatives whether SBC would provide voice grade cabling between SBC's main distribution frames to Brooks' virtual collocations at the Tulsa-Elgin and Oklahoma City-Central central offices. SBC's provision of voice grade cabling would have permitted Brooks to use those virtual collocations for unbundled loop-based service assuming Brooks could have also installed subscriber loop carrier equipment the collocations.²² SBC refused to make available voice grade cabling to those virtual collocations, on the grounds that those arrangements came under its interstate expanded interconnection tariff which contemplated only competitive access, and not unbundled loop, service. Faced with this refusal, Brooks abandoned consideration of use of unbundled loops through its pre-existing virtual collocations in Oklahoma. Brooks is implementing physical collocations in those central offices.²³

Moreover, SBC's refusal to provide voice grade cabling to Brooks' pre-existing virtual collocations spawned a separate set of discussions between the companies

²² The Tulsa-Elgin and Oklahoma City-Central virtual collocations contain OC-48, OC-12 and OC-3 type equipment, designed for competitive access services.

²³ While the pre-existing virtual collocations could have provided a near-term vehicle for providing unbundled loop-based service, additional collocation arrangements in those two central offices have always been contemplated by Brooks due to capacity requirements.

regarding establishment of a contractual form of virtual collocation which would be compatible with unbundled loop-based service. SBC agreed conceptually to this approach during the interconnection negotiations, and the parties have held a number of meetings or conference calls on the subject. At this point Brooks has itself generated two different draft contracts, but has not yet received any definitive response from SBC.²⁴ Originally Brooks viewed this contractual form of virtual collocation as a intermediate vehicle for unbundled loop-based service from the Tulsa-Elgin and Oklahoma City-Central central offices prior to the completion of physical collocations at those locations. At this point, however, Brooks is pursuing this contractual form of virtual collocation as a substitute for physical collocation at locations where SBC asserts that insufficient space exists for physical collocations.²⁵ Use of the contractual form of virtual collocation is no longer viable as an intermediate vehicle in the Tulsa-Elgin and Oklahoma City-Central central offices, since the physical collocations should be operational in the near future.

More recently, by letter dated May 16, 1997, Brooks has received written notification from SBC regarding its policy of attempting to require competitive providers to contact and negotiate with SBC's various equipment vendors/licensors with respect to any intellectual property rights potentially implicated by Brooks obtaining access to SBC's network elements. As DOJ noted,²⁶ this policy blatantly ignores the Commission's

²⁴ SBC has provided a draft letter agreement which would cover installation of the subscriber loop carrier equipment and Brooks has responded with suggested changes, but even this agreement remains open.

²⁵ There are two such locations in Oklahoma – the Oklahoma City-University and Oklahoma City-Windsor central offices.

²⁶ DOJ Evaluation at 64-66.

directives on this subject and, if allowed to stand, will erect a daunting new barrier for Brooks to hurdle, with the potential for substantial additional delay in the development of competition.

Brooks believes its experience with SBC regarding virtual collocation is instructive. It is clear to Brooks that so long as SBC believes that it has a chance to gain Section 271 approval based on “paper availability” rather than actual implementation of collocation, SBC will have no incentive to act expeditiously to assist facility-based carriers like Brooks with the timely and cost-effective²⁷ completion of these arrangements. Brooks’ experience demonstrates the need for the Commission to send an unambiguous signal to SBC and all of the Bell Companies that *actual provision* of checklist items – in a manner fully compliant with the substantive requirements of Sections 251 (c) and 252 (d) – is required as a condition of in-region, interLATA entry.

²⁷ As Brooks has previously indicated, it has paid for its physical collocations under protest, and has reserved its rights to seek after-the-fact recovery of excessive collocation costs.

*Brooks Fiber Properties, Inc.
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III. CONCLUSION

For all of the reasons stated herein and in Brooks' May 1 Opposition, Brooks respectfully urges the Commission to reject SBC's Application.

Respectfully submitted,

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Dated: May 27, 1997

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **REPLY COMMENTS OF BROOKS FIBER PROPERTIES, INC.** was mailed on this 27th day of May, 1997, via first class U.S. mail to the following:

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